

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

GUILLERMO BORBOA,

Defendants.

**8:5-CR-24**

**ORDER ON CERTIFICATE OF  
APPEALABILITY**

This matter is before the Court on limited remand from the Eighth Circuit Court of Appeals to determine whether to issue a certificate of appealability for defendant Guillermo Borba's appeal. [Filing 146](#). Borboa is presently appealing the Court's February 17, 2023, Order denying Guillermo's "Motion for Immediate Release." [Filing 140](#); [Filing 138](#); [Filing 137](#). The Court will not issue a certificate of appealability.

No appeal may be taken on a § 2255 motion to vacate unless a judge issues a certificate of appealability, which requires the appellant to make "a substantial showing of the denial of a constitutional right." [28 U.S.C. § 2253\(c\)\(1\)–\(2\)](#). To make "a substantial showing of the denial of a constitutional right" after the district court denied the constitutional claims on the merits, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." [Slack v. McDaniel, 529 U.S. 473, 484 \(2000\)](#). When a petition is denied on procedural grounds, a petition is entitled to a certificate of appealability if the petitioner "shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." [Id.](#)

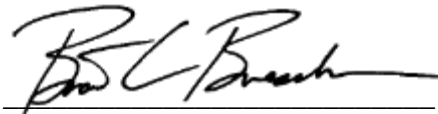
As the Court explained in its Order, Borboa’s “Motion for Immediate Release” attacked the legality of his conviction and imprisonment and requested immediate release, so it was properly construed as a 28 U.S.C. § 2255 habeas petition. [Filing 138 at 1](#). Under the law, a successive habeas petition must be certified by a panel of the appropriate court of appeals. 28 U.S.C. § 2255(h). Borboa failed to do so, which deprived the Court of jurisdiction. *See Burton v. Stewart*, [549 U.S. 147, 153 \(2007\)](#) (noting that the district court was without jurisdiction to entertain the petitioner’s second habeas petition when the petitioner failed to obtain authorization from the court of appeals); *Williams v. Hopkins*, [130 F.3d 333, 336 \(8th Cir. 1997\)](#) (holding that district court correctly determined it lacked jurisdiction to consider a successive habeas petition).

Reasonable jurists would not find the Court’s decisions debatable. The law is clear: a successive §2255 habeas petition must be presented to the court of appeals first. Accordingly,

IT IS ORDERED that the Court will not issue a certificate of appealability for Borboa’s Guillermo’s appeal.

Dated this 10th day of May, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "B. C. Buescher", written over a horizontal line.

Brian C. Buescher  
United States District Judge